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**SUBSTITUTE HOUSE BILL 1934**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Lovick, Ahern, Dickerson, Santos, O'Brien, Williams, Simpson, Ericks and Chase)

READ FIRST TIME 02/28/05.

1 AN ACT Relating to assault of a peace officer with a projectile  
2 stun gun; amending RCW 9A.36.031 and 9A.04.110; reenacting and amending  
3 RCW 9.94A.515; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9A.36.031 and 1999 c 328 s 1 are each amended to read  
6 as follows:

7 (1) A person is guilty of assault in the third degree if he or she,  
8 under circumstances not amounting to assault in the first or second  
9 degree:

10 (a) With intent to prevent or resist the execution of any lawful  
11 process or mandate of any court officer or the lawful apprehension or  
12 detention of himself or another person, assaults another; or

13 (b) Assaults a person employed as a transit operator or driver, the  
14 immediate supervisor of a transit operator or driver, a mechanic, or a  
15 security officer, by a public or private transit company or a  
16 contracted transit service provider, while that person is performing  
17 his or her official duties at the time of the assault; or

18 (c) Assaults a school bus driver, the immediate supervisor of a  
19 driver, a mechanic, or a security officer, employed by a school

1 district transportation service or a private company under contract for  
2 transportation services with a school district, while the person is  
3 performing his or her official duties at the time of the assault; or

4 (d) With criminal negligence, causes bodily harm to another person  
5 by means of a weapon or other instrument or thing likely to produce  
6 bodily harm; or

7 (e) Assaults a fire fighter or other employee of a fire department,  
8 county fire marshal's office, county fire prevention bureau, or fire  
9 protection district who was performing his or her official duties at  
10 the time of the assault; or

11 (f) With criminal negligence, causes bodily harm accompanied by  
12 substantial pain that extends for a period sufficient to cause  
13 considerable suffering; or

14 (g) Assaults a law enforcement officer or other employee of a law  
15 enforcement agency who was performing his or her official duties at the  
16 time of the assault; or

17 (h) Assaults a peace officer with a projectile stun gun; or

18 (i) Assaults a nurse, physician, or health care provider who was  
19 performing his or her nursing or health care duties at the time of the  
20 assault. For purposes of this subsection: "Nurse" means a person  
21 licensed under chapter 18.79 RCW; "physician" means a person licensed  
22 under chapter 18.57 or 18.71 RCW; and "health care provider" means a  
23 person certified under chapter 18.71 or 18.73 RCW who performs  
24 emergency medical services or a person regulated under Title 18 RCW and  
25 employed by, or contracting with, a hospital licensed under chapter  
26 70.41 RCW.

27 (2) Assault in the third degree is a class C felony.

28 **Sec. 2.** RCW 9.94A.515 and 2004 c 176 s 2 and 2004 c 94 s 3 are  
29 each reenacted and amended to read as follows:

30		TABLE 2
31		CRIMES INCLUDED WITHIN
32		EACH SERIOUSNESS LEVEL
33	XVI	Aggravated Murder 1 (RCW
34		10.95.020)
35	XV	Homicide by abuse (RCW 9A.32.055)

1 Malicious explosion 1 (RCW  
2 70.74.280(1))  
3 Murder 1 (RCW 9A.32.030)  
4 XIV Murder 2 (RCW 9A.32.050)  
5 Trafficking 1 (RCW 9A.40.100(1))  
6 XIII Malicious explosion 2 (RCW  
7 70.74.280(2))  
8 Malicious placement of an explosive 1  
9 (RCW 70.74.270(1))  
10 XII Assault 1 (RCW 9A.36.011)  
11 Assault of a Child 1 (RCW 9A.36.120)  
12 Malicious placement of an imitation  
13 device 1 (RCW 70.74.272(1)(a))  
14 Rape 1 (RCW 9A.44.040)  
15 Rape of a Child 1 (RCW 9A.44.073)  
16 Trafficking 2 (RCW 9A.40.100(2))  
17 XI Manslaughter 1 (RCW 9A.32.060)  
18 Rape 2 (RCW 9A.44.050)  
19 Rape of a Child 2 (RCW 9A.44.076)  
20 X Child Molestation 1 (RCW 9A.44.083)  
21 Indecent Liberties (with forcible  
22 compulsion) (RCW  
23 9A.44.100(1)(a))  
24 Kidnapping 1 (RCW 9A.40.020)  
25 Leading Organized Crime (RCW  
26 9A.82.060(1)(a))  
27 Malicious explosion 3 (RCW  
28 70.74.280(3))  
29 Sexually Violent Predator Escape  
30 (RCW 9A.76.115)  
31 IX Assault of a Child 2 (RCW 9A.36.130)  
32 Explosive devices prohibited (RCW  
33 70.74.180)  
34 Hit and Run--Death (RCW  
35 46.52.020(4)(a))

1 Homicide by Watercraft, by being  
2 under the influence of intoxicating  
3 liquor or any drug (RCW  
4 79A.60.050)  
5 Inciting Criminal Profiteering (RCW  
6 9A.82.060(1)(b))  
7 Malicious placement of an explosive 2  
8 (RCW 70.74.270(2))  
9 Robbery 1 (RCW 9A.56.200)  
10 Sexual Exploitation (RCW 9.68A.040)  
11 Vehicular Homicide, by being under  
12 the influence of intoxicating  
13 liquor or any drug (RCW  
14 46.61.520)  
15 VIII Arson 1 (RCW 9A.48.020)  
16 Homicide by Watercraft, by the  
17 operation of any vessel in a  
18 reckless manner (RCW  
19 79A.60.050)  
20 Manslaughter 2 (RCW 9A.32.070)  
21 Promoting Prostitution 1 (RCW  
22 9A.88.070)  
23 Theft of Ammonia (RCW 69.55.010)  
24 Vehicular Homicide, by the operation  
25 of any vehicle in a reckless  
26 manner (RCW 46.61.520)  
27 VII Burglary 1 (RCW 9A.52.020)  
28 Child Molestation 2 (RCW 9A.44.086)  
29 Civil Disorder Training (RCW  
30 9A.48.120)  
31 Dealing in depictions of minor  
32 engaged in sexually explicit  
33 conduct (RCW 9.68A.050)  
34 Drive-by Shooting (RCW 9A.36.045)  
35 Homicide by Watercraft, by disregard  
36 for the safety of others (RCW  
37 79A.60.050)

1 Indecent Liberties (without forcible  
2 compulsion) (RCW 9A.44.100(1)  
3 (b) and (c))  
4 Introducing Contraband 1 (RCW  
5 9A.76.140)  
6 Malicious placement of an explosive 3  
7 (RCW 70.74.270(3))  
8 Sending, bringing into state depictions  
9 of minor engaged in sexually  
10 explicit conduct (RCW  
11 9.68A.060)  
12 Unlawful Possession of a Firearm in  
13 the first degree (RCW  
14 9.41.040(1))  
15 Use of a Machine Gun in Commission  
16 of a Felony (RCW 9.41.225)  
17 Vehicular Homicide, by disregard for  
18 the safety of others (RCW  
19 46.61.520)  
20 VI Bail Jumping with Murder 1 (RCW  
21 9A.76.170(3)(a))  
22 Bribery (RCW 9A.68.010)  
23 Incest 1 (RCW 9A.64.020(1))  
24 Intimidating a Judge (RCW  
25 9A.72.160)  
26 Intimidating a Juror/Witness (RCW  
27 9A.72.110, 9A.72.130)  
28 Malicious placement of an imitation  
29 device 2 (RCW 70.74.272(1)(b))  
30 Rape of a Child 3 (RCW 9A.44.079)  
31 Theft of a Firearm (RCW 9A.56.300)  
32 Unlawful Storage of Ammonia (RCW  
33 69.55.020)  
34 V Abandonment of dependent person 1  
35 (RCW 9A.42.060)

1 Advancing money or property for  
2 extortionate extension of credit  
3 (RCW 9A.82.030)  
4 Bail Jumping with class A Felony  
5 (RCW 9A.76.170(3)(b))  
6 Child Molestation 3 (RCW 9A.44.089)  
7 Criminal Mistreatment 1 (RCW  
8 9A.42.020)  
9 Custodial Sexual Misconduct 1 (RCW  
10 9A.44.160)  
11 Domestic Violence Court Order  
12 Violation (RCW 10.99.040,  
13 10.99.050, 26.09.300, 26.10.220,  
14 26.26.138, 26.50.110, 26.52.070,  
15 or 74.34.145)  
16 Extortion 1 (RCW 9A.56.120)  
17 Extortionate Extension of Credit  
18 (RCW 9A.82.020)  
19 Extortionate Means to Collect  
20 Extensions of Credit (RCW  
21 9A.82.040)  
22 Incest 2 (RCW 9A.64.020(2))  
23 Kidnapping 2 (RCW 9A.40.030)  
24 Perjury 1 (RCW 9A.72.020)  
25 Persistent prison misbehavior (RCW  
26 9.94.070)  
27 Possession of a Stolen Firearm (RCW  
28 9A.56.310)  
29 Rape 3 (RCW 9A.44.060)  
30 Rendering Criminal Assistance 1  
31 (RCW 9A.76.070)  
32 Sexual Misconduct with a Minor 1  
33 (RCW 9A.44.093)  
34 Sexually Violating Human Remains  
35 (RCW 9A.44.105)  
36 Stalking (RCW 9A.46.110)

1 Taking Motor Vehicle Without  
2 Permission 1 (RCW 9A.56.070)  
3 IV Arson 2 (RCW 9A.48.030)  
4 Assault 2 (RCW 9A.36.021)  
5 Assault 3 (of a Peace Officer with a  
6 Projectile Stun Gun) (RCW  
7 9A.36.031(1)(h))  
8 Assault by Watercraft (RCW  
9 79A.60.060)  
10 Bribing a Witness/Bribe Received by  
11 Witness (RCW 9A.72.090,  
12 9A.72.100)  
13 Cheating 1 (RCW 9.46.1961)  
14 Commercial Bribery (RCW  
15 9A.68.060)  
16 Counterfeiting (RCW 9.16.035(4))  
17 Endangerment with a Controlled  
18 Substance (RCW 9A.42.100)  
19 Escape 1 (RCW 9A.76.110)  
20 Hit and Run--Injury (RCW  
21 46.52.020(4)(b))  
22 Hit and Run with Vessel--Injury  
23 Accident (RCW 79A.60.200(3))  
24 Identity Theft 1 (RCW 9.35.020(2))  
25 Indecent Exposure to Person Under  
26 Age Fourteen (subsequent sex  
27 offense) (RCW 9A.88.010)  
28 Influencing Outcome of Sporting  
29 Event (RCW 9A.82.070)  
30 Malicious Harassment (RCW  
31 9A.36.080)  
32 Residential Burglary (RCW  
33 9A.52.025)  
34 Robbery 2 (RCW 9A.56.210)  
35 Theft of Livestock 1 (RCW 9A.56.080)  
36 Threats to Bomb (RCW 9.61.160)

1 Trafficking in Stolen Property 1 (RCW  
2 9A.82.050)  
3 Unlawful factoring of a credit card or  
4 payment card transaction (RCW  
5 9A.56.290(4)(b))  
6 Unlawful transaction of health  
7 coverage as a health care service  
8 contractor (RCW 48.44.016(3))  
9 Unlawful transaction of health  
10 coverage as a health maintenance  
11 organization (RCW 48.46.033(3))  
12 Unlawful transaction of insurance  
13 business (RCW 48.15.023(3))  
14 Unlicensed practice as an insurance  
15 professional (RCW 48.17.063(3))  
16 Use of Proceeds of Criminal  
17 Profiteering (RCW 9A.82.080 (1)  
18 and (2))  
19 Vehicular Assault, by being under the  
20 influence of intoxicating liquor or  
21 any drug, or by the operation or  
22 driving of a vehicle in a reckless  
23 manner (RCW 46.61.522)  
24 Willful Failure to Return from  
25 Furlough (RCW 72.66.060)  
26 III Abandonment of dependent person 2  
27 (RCW 9A.42.070)  
28 Assault 3 (Except Assault 3 of a Peace  
29 Officer With a Projectile Stun  
30 Gun) (RCW 9A.36.031 except  
31 subsection (1)(h))  
32 Assault of a Child 3 (RCW 9A.36.140)  
33 Bail Jumping with class B or C Felony  
34 (RCW 9A.76.170(3)(c))  
35 Burglary 2 (RCW 9A.52.030)

1 Communication with a Minor for  
2 Immoral Purposes (RCW  
3 9.68A.090)  
4 Criminal Gang Intimidation (RCW  
5 9A.46.120)  
6 Criminal Mistreatment 2 (RCW  
7 9A.42.030)  
8 Custodial Assault (RCW 9A.36.100)  
9 Cyberstalking (subsequent conviction  
10 or threat of death) (RCW  
11 9.61.260(3))  
12 Escape 2 (RCW 9A.76.120)  
13 Extortion 2 (RCW 9A.56.130)  
14 Harassment (RCW 9A.46.020)  
15 Intimidating a Public Servant (RCW  
16 9A.76.180)  
17 Introducing Contraband 2 (RCW  
18 9A.76.150)  
19 Malicious Injury to Railroad Property  
20 (RCW 81.60.070)  
21 Patronizing a Juvenile Prostitute  
22 (RCW 9.68A.100)  
23 Perjury 2 (RCW 9A.72.030)  
24 Possession of Incendiary Device (RCW  
25 9.40.120)  
26 Possession of Machine Gun or Short-  
27 Barreled Shotgun or Rifle (RCW  
28 9.41.190)  
29 Promoting Prostitution 2 (RCW  
30 9A.88.080)  
31 Securities Act violation (RCW  
32 21.20.400)  
33 Tampering with a Witness (RCW  
34 9A.72.120)  
35 Telephone Harassment (subsequent  
36 conviction or threat of death)  
37 (RCW 9.61.230(2))

1 Theft of Livestock 2 (RCW 9A.56.083)  
2 Trafficking in Stolen Property 2 (RCW  
3 9A.82.055)  
4 Unlawful Imprisonment (RCW  
5 9A.40.040)  
6 Unlawful possession of firearm in the  
7 second degree (RCW 9.41.040(2))  
8 Vehicular Assault, by the operation or  
9 driving of a vehicle with disregard  
10 for the safety of others (RCW  
11 46.61.522)  
12 Willful Failure to Return from Work  
13 Release (RCW 72.65.070)  
14 II Computer Trespass 1 (RCW  
15 9A.52.110)  
16 Counterfeiting (RCW 9.16.035(3))  
17 Escape from Community Custody  
18 (RCW 72.09.310)  
19 Health Care False Claims (RCW  
20 48.80.030)  
21 Identity Theft 2 (RCW 9.35.020(3))  
22 Improperly Obtaining Financial  
23 Information (RCW 9.35.010)  
24 Malicious Mischief 1 (RCW  
25 9A.48.070)  
26 Possession of Stolen Property 1 (RCW  
27 9A.56.150)  
28 Theft 1 (RCW 9A.56.030)  
29 Theft of Rental, Leased, or Lease-  
30 purchased Property (valued at one  
31 thousand five hundred dollars or  
32 more) (RCW 9A.56.096(5)(a))  
33 Trafficking in Insurance Claims (RCW  
34 48.30A.015)  
35 Unlawful factoring of a credit card or  
36 payment card transaction (RCW  
37 9A.56.290(4)(a))

1 Unlawful Practice of Law (RCW  
2 2.48.180)  
3 Unlicensed Practice of a Profession or  
4 Business (RCW 18.130.190(7))  
5 I Attempting to Elude a Pursuing Police  
6 Vehicle (RCW 46.61.024)  
7 False Verification for Welfare (RCW  
8 74.08.055)  
9 Forgery (RCW 9A.60.020)  
10 Fraudulent Creation or Revocation of a  
11 Mental Health Advance Directive  
12 (RCW 9A.60.060)  
13 Malicious Mischief 2 (RCW  
14 9A.48.080)  
15 Mineral Trespass (RCW 78.44.330)  
16 Possession of Stolen Property 2 (RCW  
17 9A.56.160)  
18 Reckless Burning 1 (RCW 9A.48.040)  
19 Taking Motor Vehicle Without  
20 Permission 2 (RCW 9A.56.075)  
21 Theft 2 (RCW 9A.56.040)  
22 Theft of Rental, Leased, or Lease-  
23 purchased Property (valued at two  
24 hundred fifty dollars or more but  
25 less than one thousand five  
26 hundred dollars) (RCW  
27 9A.56.096(5)(b))  
28 Transaction of insurance business  
29 beyond the scope of licensure  
30 (RCW 48.17.063(4))  
31 Unlawful Issuance of Checks or Drafts  
32 (RCW 9A.56.060)  
33 Unlawful Possession of Fictitious  
34 Identification (RCW 9A.56.320)  
35 Unlawful Possession of Instruments of  
36 Financial Fraud (RCW  
37 9A.56.320)

1 Unlawful Possession of Payment  
2 Instruments (RCW 9A.56.320)  
3 Unlawful Possession of a Personal  
4 Identification Device (RCW  
5 9A.56.320)  
6 Unlawful Production of Payment  
7 Instruments (RCW 9A.56.320)  
8 Unlawful Trafficking in Food Stamps  
9 (RCW 9.91.142)  
10 Unlawful Use of Food Stamps (RCW  
11 9.91.144)  
12 Vehicle Prowl 1 (RCW 9A.52.095)

13 **Sec. 3.** RCW 9A.04.110 and 1988 c 158 s 1 are each amended to read  
14 as follows:

15 In this title unless a different meaning plainly is required:

16 (1) "Acted" includes, where relevant, omitted to act;

17 (2) "Actor" includes, where relevant, a person failing to act;

18 (3) "Benefit" is any gain or advantage to the beneficiary,  
19 including any gain or advantage to a third person pursuant to the  
20 desire or consent of the beneficiary;

21 (4)(a) "Bodily injury," "physical injury," or "bodily harm" means  
22 physical pain or injury, illness, or an impairment of physical  
23 condition;

24 (b) "Substantial bodily harm" means bodily injury which involves a  
25 temporary but substantial disfigurement, or which causes a temporary  
26 but substantial loss or impairment of the function of any bodily part  
27 or organ, or which causes a fracture of any bodily part;

28 (c) "Great bodily harm" means bodily injury which creates a  
29 probability of death, or which causes significant serious permanent  
30 disfigurement, or which causes a significant permanent loss or  
31 impairment of the function of any bodily part or organ;

32 (5) "Building", in addition to its ordinary meaning, includes any  
33 dwelling, fenced area, vehicle, railway car, cargo container, or any  
34 other structure used for lodging of persons or for carrying on business  
35 therein, or for the use, sale or deposit of goods; each unit of a  
36 building consisting of two or more units separately secured or occupied  
37 is a separate building;

1 (6) "Deadly weapon" means any explosive or loaded or unloaded  
2 firearm, and shall include any other weapon, device, instrument,  
3 article, or substance, including a "vehicle" as defined in this  
4 section, which, under the circumstances in which it is used, attempted  
5 to be used, or threatened to be used, is readily capable of causing  
6 death or substantial bodily harm;

7 (7) "Dwelling" means any building or structure, though movable or  
8 temporary, or a portion thereof, which is used or ordinarily used by a  
9 person for lodging;

10 (8) "Government" includes any branch, subdivision, or agency of the  
11 government of this state and any county, city, district, or other local  
12 governmental unit;

13 (9) "Governmental function" includes any activity which a public  
14 servant is legally authorized or permitted to undertake on behalf of a  
15 government;

16 (10) "Indicted" and "indictment" include "informed against" and  
17 "information", and "informed against" and "information" include  
18 "indicted" and "indictment";

19 (11) "Judge" includes every judicial officer authorized alone or  
20 with others, to hold or preside over a court;

21 (12) "Malice" and "maliciously" shall import an evil intent, wish,  
22 or design to vex, annoy, or injure another person. Malice may be  
23 inferred from an act done in wilful disregard of the rights of another,  
24 or an act wrongfully done without just cause or excuse, or an act or  
25 omission of duty betraying a wilful disregard of social duty;

26 (13) "Officer" and "public officer" means a person holding office  
27 under a city, county, or state government, or the federal government  
28 who performs a public function and in so doing is vested with the  
29 exercise of some sovereign power of government, and includes all  
30 assistants, deputies, clerks, and employees of any public officer and  
31 all persons lawfully exercising or assuming to exercise any of the  
32 powers or functions of a public officer;

33 (14) "Omission" means a failure to act;

34 (15) "Peace officer" means a duly appointed city, county, or state  
35 law enforcement officer;

36 (16) "Pecuniary benefit" means any gain or advantage in the form of  
37 money, property, commercial interest, or anything else the primary  
38 significance of which is economic gain;

1 (17) "Person", "he", and "actor" include any natural person and,  
2 where relevant, a corporation, joint stock association, or an  
3 unincorporated association;

4 (18) "Place of work" includes but is not limited to all the lands  
5 and other real property of a farm or ranch in the case of an actor who  
6 owns, operates, or is employed to work on such a farm or ranch;

7 (19) "Prison" means any place designated by law for the keeping of  
8 persons held in custody under process of law, or under lawful arrest,  
9 including but not limited to any state correctional institution or any  
10 county or city jail;

11 (20) "Prisoner" includes any person held in custody under process  
12 of law, or under lawful arrest;

13 (21) "Projectile stun gun" means an electronic device that projects  
14 wired probes attached to the device that emit an electrical charge and  
15 that is designed and primarily employed to incapacitate a person or  
16 animal;

17 (22) "Property" means anything of value, whether tangible or  
18 intangible, real or personal;

19 ((+22)) (23) "Public servant" means any person other than a  
20 witness who presently occupies the position of or has been elected,  
21 appointed, or designated to become any officer or employee of  
22 government, including a legislator, judge, judicial officer, juror, and  
23 any person participating as an advisor, consultant, or otherwise in  
24 performing a governmental function;

25 ((+23)) (24) "Signature" includes any memorandum, mark, or sign  
26 made with intent to authenticate any instrument or writing, or the  
27 subscription of any person thereto;

28 ((+24)) (25) "Statute" means the Constitution or an act of the  
29 legislature or initiative or referendum of this state;

30 ((+25)) (26) "Threat" means to communicate, directly or indirectly  
31 the intent:

32 (a) To cause bodily injury in the future to the person threatened  
33 or to any other person; or

34 (b) To cause physical damage to the property of a person other than  
35 the actor; or

36 (c) To subject the person threatened or any other person to  
37 physical confinement or restraint; or

- 1 (d) To accuse any person of a crime or cause criminal charges to be  
2 instituted against any person; or
- 3 (e) To expose a secret or publicize an asserted fact, whether true  
4 or false, tending to subject any person to hatred, contempt, or  
5 ridicule; or
- 6 (f) To reveal any information sought to be concealed by the person  
7 threatened; or
- 8 (g) To testify or provide information or withhold testimony or  
9 information with respect to another's legal claim or defense; or
- 10 (h) To take wrongful action as an official against anyone or  
11 anything, or wrongfully withhold official action, or cause such action  
12 or withholding; or
- 13 (i) To bring about or continue a strike, boycott, or other similar  
14 collective action to obtain property which is not demanded or received  
15 for the benefit of the group which the actor purports to represent; or
- 16 (j) To do any other act which is intended to harm substantially the  
17 person threatened or another with respect to his health, safety,  
18 business, financial condition, or personal relationships;
- 19 ~~((+26+))~~ (27) "Vehicle" means a "motor vehicle" as defined in the  
20 vehicle and traffic laws, any aircraft, or any vessel equipped for  
21 propulsion by mechanical means or by sail;
- 22 ~~((+27+))~~ (28) Words in the present tense shall include the future  
23 tense; and in the masculine shall include the feminine and neuter  
24 genders; and in the singular shall include the plural; and in the  
25 plural shall include the singular.

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